IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 15 of 2003

Anil Kumar Rawat and others ....Petitioners.

Versus

State of Uttaranchal and another ...Respondents.

Present : Mr. Sandeep Kothari, Advocate for the petitioners.
Mr. Anil Kumar Bisht, Brief Holder for the State of Uttarakhand.

Hon'ble Sudhanshu Dhulia, J. (Oral)

Heard Mr. Sandeep Kothari, Advocate for the petitioners and Mr. Anil Kumar Bisht, Brief Holder for the State of Uttarakhand.

All the petitioners were class IV employees in Animal Husbandry Department, State of Uttarakhand. They were subsequently promoted vide order dated 1.10.2002 under the quota reserved for class IV employees for the next higher post i.e. class III. Consequently thereafter vide an order dated 23.12.2002 they were reverted to the said post. The legal submission made by the counsel for the petitioners before this Court is that the petitioners were occupying civil posts and therefore they admittedly have a protection under Article 311 of the Constitution of India and since admittedly they were not heard before the impugned order dated 23.12.2002 was passed, it is violation of Article 311 of the Constitution of India.

The respondents in the counter affidavit have defended the stand of reverting the petitioners on the ground that a selection committee has to be constituted under Rules 16 and 18 of the U.P. Animal Husbandry Department Ministerial Service Rules, 1981. Admittedly, instead of Chief Veterinary Officer, Additional Director (though of equal rank) was delegated to chair the Committee. There were other anomalies in the formation of committee and as such the promotion of the petitioners are bad.

Article 311 of the Constitution of India reads as under :-

"**311. Dismissal, Removal or reduction in rank of persons employed in civil capacities under the Union or a State. –** (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply –

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

An employee working on a civil post cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In the present case, admittedly the petitioners have been reverted i.e. reduced in rank (i.e. from class III to class IV) without giving an opportunity of hearing to them. It has therefore been done clearly in violation of Article 311 of the Constitution of India.

Writ petition therefore succeeds. Order dated 23.12.2002 is quashed. Without saying anything on the merit of the case, it is made clear that the respondents shall be at liberty to initiate proceedings to revert the petitioners but only in accordance with law, after giving them an opportunity of hearing.

No order as to costs.

(Sudhanshu Dhulia, J.)

1.9.2011
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